

# MEDICINE BOARD[653]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76 and chapters 148 and 272C, the Board of Medicine hereby amends Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code.

The amendments update language in subrules 2.13(2) and 2.13(4) to clarify what is a confidential record and to allow the Board to share information with the Department of Revenue and the College Student Aid Commission in certain circumstances.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 22, 2010, as **ARC 9089B**. A public hearing was held on October 12, 2010, and comments were submitted by the Iowa Medical Society, the Des Moines Register, and Fawkes-Lee & Ryan, public policy advocates.

On December 17, 2010, the Board adopted these amendments with a slight revision based on comments received. In subparagraph 2.13(2)"c"(2), the following language was deleted: "the coordinated licensure information system provided for in the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3, the District of Columbia."

These amendments will become effective on February 16, 2011.

These amendments are intended to implement Iowa Code section 147.76 and chapters 148 and 272C. The following amendments are adopted.

ITEM 1. Amend subrule 2.13(2) as follows:

**2.13(2)** Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* and *b.* No change.

*c.* ~~All information in complaint and investigation files maintained by the agency for purposes of licensee discipline except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing is confidential in accordance with Iowa Code section 272C.6(4).~~ All complaint files, investigative files, other investigation reports, and other investigation information maintained by the agency for purposes of licensee discipline are confidential. (Iowa Code section 272C.6(4))

(1) This information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing. (Iowa Code section 272C.6)

(2) The agency may disclose the investigative file, reports and other information to appropriate licensing authorities within this state or the appropriate licensing authorities in another state, territory or country in which the licensee is licensed or has applied for a license. (Iowa Code section 272C.6(4))

(3) If the investigative information in the possession of the agency indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. However, a final written decision and finding of fact in a disciplinary proceeding, including a decision referred to in Iowa Code section 272C.3, subsection 4, is a public record. (Iowa Code section 272C.6(4))

~~*d.* Criminal history or prior misconduct of an applicant for licensure. (Iowa Code chapters 22, 147, and 692)~~

~~*e.* *d.* Information relating to the contents of an examination for licensure. (Iowa Code section 147.21)~~

~~*f.* *e.* Information relating to the results of an examination for licensure other than final score except for information about the results of an examination which is given to the person who took the examination. (Iowa Code section 147.21)~~

~~*g.* *f.* Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code chapter 125 and section 228.2 and 42 U.S.C. 290 ee-3 and ff-3 dd-2)~~

~~h. g.~~ Minutes and tape recordings of ~~closed meetings of the agency~~ portions of meetings held in closed session. (Iowa Code section 21.5(4))

~~i. h.~~ The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1). (Iowa Code section 21.5(4)) ~~However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(16) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. (Iowa Code sections 21.5(4) and 272C.6(4))~~

~~j. i.~~ Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e." (Iowa Code sections 21.5(3) and 21.5(18))

~~k. j.~~ Records which constitute attorney work product; ~~or~~ attorney-client communications; or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(e) R. Civ. P. 1.503, Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

~~l. k.~~ No change.

ITEM 2. Amend subrule 2.13(4) as follows:

**2.13(4)** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit, the department of revenue, and the college student aid commission through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, 261, 272D or 598.

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